

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
NOVEMBER 13, 2019**

CALL TO ORDER 6:00 PM	A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at South Campus Building, 40 11 th Street W, Ste. 200, Kalispell, Montana. Board members present were Dean Sirucek, Greg Stevens, Sandra Nogal, Ron Schlegel, and Elliot Adams. Mike Horn, Jeff Larsen, and Kevin Lake had excused absences and Jim Thompson had an unexcused absence. Erik Mack and Mark Mussman represented the Flathead County Planning & Zoning Office. There were 13 members of the public in attendance.
APPROVAL OF MEETING MINUTES 6:01 PM	Schlegel made a motion, seconded by Sirucek, to approve the September 11, 2019 meeting minutes. Motion passed unanimously on a roll call vote.
PUBLIC COMMENT <i>(Public matters that are within the jurisdiction of the Board 2-3-103 M.C.A)</i> 6:02 PM	None
DISCLOSURE OF ANY CONFLICT OF INTERESTS 6:02 PM	None
ROBINSON RANCH HOLDINGS, LLC ZONE CHANGE (FZC-19-17) 6:02 PM	A zone change request by Breckenridge Surveying and Mapping, on behalf of Robinson Ranch Holdings, LLC for property in the Evergreen Zoning District. The proposal would change the zoning on property located at 519 Ezy Drive, in Kalispell, MT from <i>SAG-10 (Suburban Agricultural)</i> to <i>R-5 (Two Family Residential)</i> . The total acreage involved in the request is approximately 33.93 acres.
STAFF REPORT 6:03 PM	Erik Mack reviewed staff report FZC-19-17 for the board.

**BOARD
QUESTIONS
6:08 PM**

Sirucek wondered why there were conclusions missing to some of the findings within the staff report. Mack explained that there were some unknowns and missing information. He suggested the applicants may have some of that information but it was not given to him at the time the staff report was written.

Sirucek questioned finding #1 and wondered if it did or did not comply with the Master Plan. Mack explained that he gave the facts based on what was in front of him at the time.

**APPLICANT
PRESENTATION
6:11 PM**

Rick Breckenridge with Breckenridge Surveying and Mapping, 2303 US Highway 2 E., represented the applicant. He said the property was “in search of a project” and had spent the last 20 years in litigation. Everything on the property had been a grandfathered use but did not have any direction. He pointed out that the property had a straight shot to Reserve and the Hutton [Ranch] Plaza shopping area of Kalispell. He said Kalispell was in dire need of housing, as the 1986 Master Plan said and was reiterated in 2010. The reason why they went to R-5 in this proposal was because they wanted to have multi-family dwellings on the property. They could not do that with any other zoning without needing a conditional use permit. The property was in need of direction and he felt the direction was predicated on their ability to use some of the land in the floodplain. He addressed needing a flood permit but would not be able to apply for it until they had a project. He addressed the gravel pit that had been sitting there, not in use anymore, but they wanted to incorporate it. He said, in R-5 zoning, they could do some public events and could use the water as a backdrop. In the Master Plan, they wanted to reserve areas in the 100-year floodplain in its natural state. He pointed out, with a boundary line adjustment, they could preserve and protect the floodplain. Their intent was to help alleviate some of the pressure that they had with the expanding City of Kalispell. By allowing the zone change to an R-5, there would be an economic motive to do something. They would not be able to move anything at this time because of the current zoning and the grandfathered use that they had. The R-5 would allow them to do a boundary line adjustment where they could develop green belts along the river. There were a number of growth policy points that this proposal would protect. The reason for the R-5 was that they could do a duplex after doing a fill permit. If they went with R-1, the owner would have to live in one side of the duplex. They proposed to make the gravel pit in to something that could support the community activities and the people living out there (like a facility for events). He said the final goal was getting duplexes and density that SAG-10 or SAG-5 would not allow. He said they were about .25 miles away from the river and it gave the county and city a lot of say in the management of the backflow and the floodplain that they wanted to preserve.

He felt condition #2 could be mitigated as they had a good water source in the gravel pit to mitigate any fire hazard and/or relief.

He felt condition #5 could be mitigated because they would be doing their own water and sewer district on this. DEQ would mitigate any of the concerns because everything would go through them for review.

He addressed condition #9 and said the problem was the 1986 plan that was not compatible with the current growth. He discussed the traffic count of East Reserve and said it was not even at capacity of what it was able to handle.

He addressed condition #10 regarding spot zoning and said that everything was grandfathered in. They were going to continue to use that unless they were given some direction by the Planning and Zoning Department. This was their idea and vision that they had; some multi-family units. He was not sure that he could mitigate the concern of spot zoning. They were working with a 35 year old plan, trying to impose that on a use that had been grandfathered in since 1965. He felt that an R-5 would give the ability and incentive to clean it up and make it a poster child of what they can do when we work together.

**BOARD
QUESTIONS
6:24 PM**

Stevens asked if the water was permitted to be in the [gravel] pit. Breckinridge said they had not put together a reclamation plan yet as it was not required when it was permitted. The applicant interjected from the audience that it was permitted. Schlegel brought up that if the gravel pit was permitted, they only had so long to reclaim it. He wondered where they were at in the process. The applicant, who did not identify himself, said it was still active and they were still paying on the deal because they were still taking some gravel out of it every year. Breckinridge clarified that it was active and the activity had waned.

**AGENCY
COMMENTS
6:26 PM**

There were no public agencies present to comment. The staff reviewed the written comments during the staff report presentation. Stevens asked that staff review them again for the public to hear and he did so.

**PUBLIC
COMMENT
6:28 PM**

Carol Berglund, 399 Ezy Drive, spoke in opposition of the application. She was concerned about the increase of traffic, taxes, and possible increase load on the school. She wanted to keep her road and community the way that it currently was.

Kim Paulsen, 444 Ezy Drive, spoke in opposition of the application. They reviewed the application and noticed that there were a few unknowns that were checked off in which she claimed were actually known. She said it would only benefit two land owners. She was concerned about the “unknowns” and what was really going to happen. It was brought to her attention that the units that were on there now may not be in compliance with the regulations. She felt people still had the same desires [for the community/street] as was voiced in the Master Plan from the 1980’s. She felt it was irresponsible for low income housing to be built in the 100-year floodplain. She was also concerned

about the increase of traffic and felt the roads needed to be worked on before residential development.

Bruce Berglund, 399 Ezy Drive, spoke in opposition of the application. He was in agreement with what had been shared. He wondered if Evergreen Sewer and Water was going to go all the way down Ezy Drive because he didn't want that [to occur].

Nancy Burtfield, 427 Ezy Drive, had heard several different things about the proposal and had gotten clarification from the applicant that there may be 3 duplexes developed. She was satisfied with the clarification.

Garth Bergman, 444 Ezy Drive, spoke in opposition of the application. He felt it was irresponsible to move low income housing within the floodplain. He was also concerned about the increase of traffic. He had learned tonight that they were only planning on several duplexes but could go up to 154 lots. He was concerned for the possible increase of traffic. He did not feel like it was the right project for the area and pointed out that the findings said it was not in compliance with the master plan. He was also concerned about the city water and sewer as well as the increase of property taxes. He felt it was a good idea, they needed housing in the area, but he did not feel like it was in the appropriate area.

**APPLICANT
REBUTTAL/
COMMENTS
6:41 PM**

Breckenridge pointed out there was not an official developmental proposal, they were applying for a zone change so that they could come up with a plan.

He said there had been a 13% increase of traffic on the nearby roads in 10 years. Those were not published statistics so he could not really comment on it but one thing he could address was the amount of subdivisions developed in that area since 2010. There had been no new subdivisions on that road [in which he referenced on the overhead map]. They were not looking at a development that the road infrastructure could not sustain.

He said if the zone was changed to R-5, then the truck traffic would stop because the business would change.

He said the floodplain issue would be mitigated with a fill permit to reclaim some of the area, enough to sustain a few duplexes. They were not going to use the whole parcel of land.

Breckenridge said the gravel pits can be reclaimed and reused. They were not taking any agricultural land out of production and they were meeting the goals of the 1986 plan. He felt that they had a good fit for the plan.

**BOARD
QUESTIONS
6:47 PM**

Schlegel asked about shutting down the gravel pit and reclaiming it and pointed out that there would be some truck traffic in order to get that taken care of. The gravel could not be taken out of the pit [for fill] so they would have to bring it in from somewhere else.

**STAFF
REBUTTAL/
COMMENTS
6:48 PM**

Mack addressed the public comment received prior to the meeting. Their concern was based from the pre-application and not the application that was turned in. When staff sat down with the technical representative and applicant, they did not know at that time if it would be spot zoning or not because they did not have enough information at that time to make a determination one way or the other. The staff report gave more information based on what had been turned in at the time of the application.

Schlegel pointed out the schools were notified and did not comment. Mack confirmed that they did not and gave some stats on the Helena Flats School District and Flathead High School. The school did not provide comment and had the opportunity to do so.

Mack also addressed that there was concern about having 154 units and explained that depended on the land (i.e. being on a flat piece of land with no environmental constraints). He discussed subdivision requirements that would have to be met and that the number of 154 lots would be the “worst case scenario” on a piece of land that did not have the issues that this property had. He explained that it was just a standard formula for zone changes and had addressed the environmental constraints in the staff report.

**MAIN MOTION
TO ADOPT F.O.F.
(FZC-19-17)
6:52 PM**

Schlegel made a motion, seconded by Nogal, to adopt staff report FZC-19-17 as findings of fact.

**BOARD
DISCUSSION
6:52 PM**

Sirucek asked the chairman and staff about procedure about having a quorum and unanimous votes. Mussman explained that since it was a recommendation board, and they had a quorum, it did not have to be a unanimous decision to pass.

Stevens felt finding of fact #5 was problematic due to the fact that the density allowed would ultimately be determined by what DEQ allowed. They would not be allowed to just jam anything in there if it was not approved by DEQ. Ultimately he felt the density allowed would not happen because of the floodplain and because there was no municipal water and sewer in the area. That problem would be solved at the point of a subdivision proposal because DEQ would not allow a density that did not facilitate the adequate provision of water and sewer. It was not a concern from his point of view.

Stevens also addressed spot zoning, as addressed in finding of fact #10. His understanding of a “significant difference in use” had been more in line with that they would not want to put a commercial or heavy industrial zoning out in that area. The gravel pit was grandfathered in. The residential uses, multi-family or single family home, were not significantly different. He said the area where he lived had a mixture of AG and residential uses and he did not consider them to be significantly different.

He addressed finding #10 as being a little confusing in some of the wording used and staff said it was an oversight. Stevens said that public water and sewer had never been a consideration in determination of spot zoning. He did not follow the logic of it and discussed the reasons why. Mack explained that the point he was trying to make, in comparing the R-5 in the area, was that they were served by the Evergreen Sewer and Water District. They were also $\frac{3}{4}$ of a mile away from the property. The argument could be made that there were R-2, R-4, and surrounded by R-5 less than a $\frac{1}{4}$ mile down the road that was also served by public water and sewer. He was trying to say that you could not make that argument with this one. Schlegel clarified, just because it was R-5 did not mean that it had to be served [by public sewer and water]. Mack agreed that with that density, they would typically like to have that service. Stevens said that Breckenridge mentioned they were going to have a community system. Mack said that was not a part of the application so that was not something he was aware of when writing with the staff report.

Adams questioned if they would be able to have sewer and septic if they were to maximize the density. Schlegel said if they were going to do something, DEQ was going to make it pretty extensive. Sirucek said it would be problematic to have a sewer system in gravel. Schlegel implied this issue was really beyond a zone change but noted that DEQ would put their foot down and limit them as to what they would be able to put in there. He felt like that needed to be addressed to benefit the public who had the concern regarding density.

Stevens agreed that this issue was not tied to the zone change but was glad that the public concern was addressed. Stevens said they could approve the density but the DEQ would determine what type of density will go in on any particular parcel. That fear, combined with the floodplain and gravel pit, of a big housing development was not going to happen unless Evergreen Sewer and Water was running all the way down there. He did not see that happening. Schlegel said Evergreen Sewer and Water was getting close to their capacity and did not really want to extend anymore. Stevens said it was his understanding that in order for Evergreen Sewer and Water to expand their district boundaries, they would have to have permission from The City of Kalispell and that was difficult to do.

**ROLL CALL TO
ADOPT F.O.F.
(FZC-19-17)
7:10 PM**

Motion was passed unanimously on a roll call vote.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FZC-19-17)
7:10 PM**

Schlegel made a motion, seconded by Nogal, to recommend approval of FZC-19-17 to the Board of County Commissioners.

**BOARD
DISCUSSION
7:10 PM**

Stevens wanted to address the list of public concerns brought up. He understood the concern of traffic because we all faced it. He did not see this parcel being developed as an extreme density due to limitations of not having public sewer and water, the floodplain, and gravel pit constraint.

Stevens addressed that the taxes would not increase due to the nearby development. He did not see the neighbor's property values increasing, thus increasing taxes, because there would be nearby development.

Stevens addressed the concern of density and hoped that those concerns had been resolved during the board discussion of what DEQ might allow in there.

Stevens addressed the concern for road improvement and said that road infrastructure followed development and did not proceed it, therefore, the road would not improve unless there was already a need for it. He understood their concern but also understood it was not going to happen.

Stevens also addressed the concern regarding affordable housing and said low income people had to go somewhere. He said there was a real need for affordable housing in this county. Although this proposal did not seem to make a big dent in that, if you were one of the families that needed housing and this provided it, it was important.

Stevens said he always looked at these things in the light of health and safety; whether it was going to have an unmitigated impact on public health and it would not because of DEQ. There were probably some safety concerns with the increase of traffic but the traffic counts on the roads were not near capacity so he could not defend that concern. When he looked at the general welfare, he looked at it in a number of ways including whether or not it was going to generate some additional property taxes to help relieve some of the burdens a little bit for those school and fire districts. The people that would be able to live there would certainly be able to improve their welfare. Robinsons could clean that up, make a project that would generate their family income, it would increase their welfare. He acknowledged that there was fear from the

neighbors that it would affect their general welfare but attested to, after developments come in, most of the time it is not as bad as people feared. When it came to general welfare, people in the neighborhood did not comprise the general welfare; which was for the whole planning jurisdiction. He did not feel this proposal was going to impact the whole jurisdiction.

Nogal said that she had learned quite a bit about health and safety when something came before the board. If this were “sound” land there was no way she would go for an R-5 on 33 acres. She empathized with the property owners because she didn’t know what they could do with this land. She did not envy the cost of infrastructure to make a parcel out of it that was buildable. She wanted to see it improved, although the sound of duplexes scared her, but it was currently an eyesore in a floodplain and was a no-man’s land of zoning to see what they could do to approve it. She did not completely oppose it.

Sirucek made the point that he agreed there were some problems with zoning in the area. There were some significant problems as far as the land form they were building on and the nutrient yield coming out of the system that they were talking about into a very high water table in an extremely permeable system. At the same time, he was sitting in on [other] meetings trying to figure out how to reduce the amount of nutrient input going into the Flathead River and Flathead Lake. He said if there were water and sewer going he would be in favor, but with what they were proposing and knowing what they had, [he was not in favor]. He referenced the two water quality bureaus, what they worked on, and how they did not necessarily work together because of the laws and regulations that they worked under. He explained, in detail, what the difference of what they looked at and how they can, at times, clash. He said they were looking at a site that, in his mind if they had sewer and water would be great, but he could not support it currently because of where it was going to end up. He did not feel like everyone had quite the knowledge when it came to the nutrient issues that the valley had to start dealing with pretty quickly.

Adams clarified that Sirucek was worried about too much sewage nutrients ending up in the river. Sirucek said, on that land form with that system, there would be very little natural ability for those soils to uptake those nutrients that were going to be put out by septic tanks or sewage systems because they had very little ability to do that. Once they put a septic system in there, and the treatment area becomes saturated with nutrients, it would go right down in to the water table and into the river and the lake. That was the problem he was seeing.

Stevens said that Sirucek was probably right but wondered where all the stuff that was sitting out there right now was going. Sirucek said, with the current zoning, and he agreed with DEQ, that system could probably handle what was going on out there. If you increase the density, there would obviously be significant input at some point and time going in to the ground water from that

site.

Stevens said his understanding was that the trailer houses [on the property] were going to be cleaned up. Sirucek said he understood there would be some positive [if the zone change went through] but he was looking at the big picture. Stevens said if they were going to take out some of the trailers that had been out there since 1965, running their pipe in to a 15 gallon barrel, it would be a good thing to put in a modern designed system.

Schlegel asked if Sirucek was familiar with raised septic systems and PODS. PODS were in place to take the nutrients out. Schlegel pointed out that DEQ would approve it for a certain number of bathrooms in this place. It would be better than what they have now. With the POD system, it takes nutrients out and had to be serviced twice a year. There was a lot more to it than a septic system and is also above the natural ground that is there.

Sirucek said that type of system was very good for individual buildings but he had a hard time with what he was hearing as far as the development plan. If you go through a normal septic or sewage treatment area, then there would be nutrients that would be going out of the system.

Schlegel saw some positives; that the truck traffic would pretty much go away and that the Robinson property would get cleaned up. He brought up that the schools had a chance to comment and they did not. He did not think there would be as many people as they were concerned about. He said the new septic systems were pretty amazing, however, whatever they did would not be cheap. He saw what they were trying to do to clean it up and use it for something that hasn't been used before. He saw this as a plus for the whole neighborhood.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FZC-19-17)
7:34 PM**

The motion passed unanimously on a roll call vote.

**OLD BUSINESS
7:36 PM**

Mussman addressed continuing the discussion of the consolidation of the AG zones and what to do with them. He wanted to know if they were still committed to solving the problems.

Mussman said that they had also addressed making changes to the PUD and wondered how they wanted to address it. They discussed how best to approach these topics including doing a workshop.

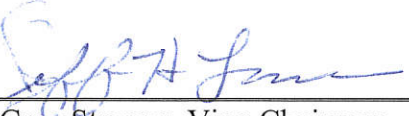
**NEW BUSINESS
7:43 PM**

Next month's agenda has two zone changes on the schedule.

Stevens discussed 5G systems that required a tower every 300-400' and wondered how it was going to fit in to the regulations. He asked that they take a look at what 5G would require. His understanding was that they were going to be close together and would go through district. The density was higher but the towers would be shorter. Stevens wondered if they would need to come up with a new definition.

ADJOURNMENT
7:45 PM

The meeting was adjourned on a motion by Schlegel and Nogal at approximately 7:45 p.m. The next meeting will be held December 11, 2019.

For: 

Greg Stevens, Vice-Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 12 / 11 /19

AGENDA
FLATHEAD COUNTY PLANNING BOARD
November 13, 2019

The Flathead County Planning Board will meet on **Wednesday, November 13, 2019** beginning at **6:00 P.M. in the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200 Kalispell, Montana.**

***Regular meetings may be concluded at 11:00 P.M., at the discretion of the Chair.*

*Any agenda item not considered prior to 11:00 P.M. will be rescheduled to the next regularly scheduled meeting. ***

All decisions made by the Planning Board are considered *recommendations* and will be forwarded to the Board of County Commissioners for *final action*. Please check the County Commissioners page of the County website, flathead.mt.gov/commissioner/or contact the Commissioners' office at 758-5503, for the scheduled date and time of a particular item.

THE AGENDA FOR THE MEETING WILL BE:

- A. Call to order and roll call**
- B. Pledge of Allegiance**
- C. Approval of the September 11, 2019 meeting minutes**
- D. Public comment on public matters that is within the jurisdiction of the Planning Board (2-3-103 M.C.A.)**
- E. Board members disclose any conflict of interests**
- F. Public Hearings: The Flathead County Planning Board will hold a public hearing on the following agenda items. Following the hearing and Board discussion, the Board may make a recommendation to the Board of County Commissioners for final action:**

- 1. FZC-19-17** A zone change request by Breckenridge Surveying and Mapping, on behalf of Robinson Ranch Holdings, LLC for property in the Evergreen Zoning District. The proposal would change the zoning on property located at 519 Ezy Drive, in Kalispell, MT from *SAG-10 (Suburban Agricultural)* to *R-5 (Two Family Residential)*. The total acreage involved in the request is approximately 33.93 acres

- G. Old Business**
- H. New Business**
- I. Adjournment**

Persons with a disability may request a reasonable accommodation by contacting Elaine Nelson at the Flathead County Commissioner's Office at 758-5501 or TTY (800) 335-7592, or call Montana Relay at 711. Requests should be made as early as possible to allow time to arrange the accommodation.

PLEASE SIGN IN WITH YOUR
PRINTED NAME AND PHYSICAL ADDRESS

name	address
Doug Casick	550 Ezy dr Kalispell, mt
Rocky Nancy Burtfield	421 Ezy dr Kalispell, MT
Ken Bohmer	519 Ezy Dr Kalispell
Bruce Carol Bengtson	399 Ezy Dr Kalispell
Cliff Bz	527 Ezy Drive
Rick Breckner	2302 Hwy 2 East #6
Tony Brockman	240 Capistrano NW Kalispell MT 59901
Garth Bergman Kim Paulsen	444 Ezy Drive, Kalispell MT
Mike O Rourke	519 Ezy Drive Kalispell
Ryan Remington	19 Happy Hill Somers

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PLEASE SIGN IN WITH YOUR
PRINTED NAME AND PHYSICAL ADDRESS

name

address

Randel Ramirez	639 N. Juniper Bay Sores
Ray Robinson	3182 Mt 35 Kalispe //

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[illegible]

Meeting Date: 11-13-19

Place/Room: